

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KAREN DE LA FUENTE,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

NO. CV 14-1112 AGR

MEMORANDUM OPINION AND
ORDER

Plaintiff Karen De La Fuente filed this action on February 21, 2014. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge. (Dkt. Nos. 9, 10.) On October 1, 2014, the parties filed a Joint Stipulation ("JS") that addressed the disputed issues. The court has taken the matter under submission without oral argument.

Having reviewed the entire file, the court affirms the decision of the Commissioner.

I.

PROCEDURAL BACKGROUND

On April 11, 2011, De La Fuente filed applications for disability insurance benefits and supplemental security income, alleging an onset date of December

1, 2010. Administrative Record (“AR”) 11, 149-58. The applications were denied initially and on reconsideration. AR 11, 73-74. De La Fuente requested a hearing before an Administrative Law Judge (“ALJ”). AR 90-91. On October 23, 2012, the ALJ conducted a hearing at which De La Fuente and a vocational expert (“VE”) testified. AR 37-72. On November 8, 2012, the ALJ issued a decision denying benefits. AR 8-21. On December 20, 2013, the Appeals Council denied the request for review. AR 1-5. This action followed.

II.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this court reviews the Commissioner’s decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence, or if it is based upon the application of improper legal standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995) (per curiam); *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

“Substantial evidence” means “more than a mere scintilla but less than a preponderance – it is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In determining whether substantial evidence exists to support the Commissioner’s decision, the court examines the administrative record as a whole, considering adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the evidence is susceptible to more than one rational interpretation, the court must defer to the Commissioner’s decision. *Moncada*, 60 F.3d at 523.

III.

DISCUSSION

A. Disability

A person qualifies as disabled, and thereby eligible for such benefits, “only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age,

1 education, and work experience, engage in any other kind of substantial gainful
2 work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20,
3 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

4 **B. The ALJ’s Findings**

5 The ALJ found that De La Fuente meets the insured status requirements
6 through December 31, 2015. AR 13.

7 Following the five-step sequential analysis applicable to disability
8 determinations, *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006),¹ the
9 ALJ found that De La Fuente had the severe impairments of systemic lupus
10 erythematosus, seizures and arthritis (arthralgias). AR 13. She had the residual
11 functional capacity (“RFC”) to perform light work. She can sit, stand or walk for
12 six hours out of an eight hour day. She should not climb ladders, ropes or
13 scaffolds or work around hazards. She can occasionally climb ramps or stairs,
14 balance, crawl, kneel, bend or crouch. She can frequently reach, handle and
15 finger bilaterally. She should avoid even moderate exposure to extremes of heat
16 and cold, and avoid environmental irritants or exposure to direct sunlight. She
17 can occasionally walk on uneven terrain. She can understand and complete
18 simple instructions and make simple decisions. She can perform goal-oriented
19 work where production quotas can be met at the end of the workday/workweek
20 and not periodically throughout the workday. AR 15. She is unable to perform
21 any past relevant work, but there are jobs that exist in significant numbers in the
22 national economy that she can perform, such as shirt presser or ticket seller. AR
23 19-21.

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25
26 ¹ The five-step sequential analysis examines whether the claimant
27 engaged in substantial gainful activity, whether the claimant’s impairment is
28 severe, whether the impairment meets or equals a listed impairment, whether the
claimant is able to do his or her past relevant work, and whether the claimant is
able to do any other work. *Lounsbury*, 468 F.3d at 1114.

1 **C. Examining Physician's Opinion**

2 De La Fuente contends that the ALJ did not properly consider the opinion
3 of Dr. Safavi, a consultative examiner.

4 An examining physician's opinion constitutes substantial evidence when it
5 is based on independent clinical findings. *Orn v. Astrue*, 495 F.3d 625, 631 (9th
6 Cir. 2007). When an examining physician's opinion is contradicted, "it may be
7 rejected for 'specific and legitimate reasons that are supported by substantial
8 evidence in the record.'" *Carmickle v. Comm'r*, 533 F.3d 1155, 1164 (9th Cir.
9 2008) (citation omitted).

10 Dr. Safavi performed an internal medicine evaluation and reviewed medical
11 records on August 20, 2010, prior to the alleged onset date. AR 267-72. Dr.
12 Safavi diagnosed systemic lupus erythematosus and history of seizure disorder.
13 AR 271. De La Fuente did not have any active skin rash but had some
14 symptoms of mild to moderate synovitis in different joints, including hands, wrists,
15 left elbow, right knee and left ankle with painful range of motion in those joints.
16 Seizures had been well-controlled for the past couple of years. The neurologic
17 examination was within normal limits. Dr. Safavi opined that De La Fuente could
18 lift and carry 20 pounds occasionally and 10 pounds frequently. She could walk,
19 sit and stand for six hours out of an eight hour day. She could occasionally
20 perform activities requiring agility and could frequently use her hands for fine and
21 gross manipulation. *Id.* She could occasionally bend, crouch, kneel, crawl and
22 stoop. AR 272. Regarding environmental limitations, Dr. Safavi opined:

23 The claimant should avoid climbing ladders. She should avoid
24 working at heights. She should avoid working around unprotected
25 water. She should avoid working with, being around or driving
26 machineries. A seizure precaution should be considered. She
27 should avoid extreme heat or cold temperatures because of being
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1 immunosuppressed. The public exposure health prevention should be
2 considered.

3 *Id.*

4 The ALJ gave weight to the opinions of Dr. Safavi. AR 19. De La Fuente
5 argues that the ALJ failed, however, to provide specific and legitimate reasons for
6 implicitly rejecting Dr. Safavi's opinion about public exposure health prevention.
7 Dr. Safavi stated only that "public exposure health prevention should be
8 considered," not that Plaintiff should avoid all public exposure. AR 272. The ALJ
9 noted that Plaintiff is not housebound.² AR 17. Moreover, any error is harmless.
10 Although the representative job of ticket seller involved significant interaction with
11 the public (DICOT 211.467-030), the other representative job of shirt presser lists
12 "People: 8 – Taking Instructions - Helping N – Not Significant" (DICOT 363.685-
13 026). Based on the vocational expert's testimony that there are 2,600 such jobs
14 in Los Angeles County (AR 21), the shirt presser job alone existed in significant
15 numbers in the national economy. See *Barker v. Secretary*, 882 F.2d 1474, 1479
16 (9th Cir. 1989) (1,266 jobs is a significant number of jobs). Accordingly, any error
17 was inconsequential to the ultimate nondisability determination. See *Molina v.*
18 *Astrue*, 674 F.3d 1104, 1121-22 (9th Cir. 2012).

19 **D. Credibility**

20 De La Fuente contends the ALJ erred in rejecting her testimony.

21 "To determine whether a claimant's testimony regarding subjective pain or
22 symptoms is credible, an ALJ must engage in a two-step analysis." *Lingenfelter*
23 *v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007). At step one, "the ALJ must
24 determine whether the claimant has presented objective medical evidence of an
25 underlying impairment 'which could reasonably be expected to produce the pain
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27
28 ² Her activities included grocery shopping, walking her daughter to school,
and going to the park or beach once a week. AR 17, 208, 211.

1 or other symptoms alleged.” *Id.* (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344
2 (9th Cir. 1991) (en banc)).

3 “Second, if the claimant meets this first test, and there is no evidence of
4 malingering, the ALJ can reject the claimant’s testimony about the severity of her
5 symptoms only by offering specific, clear and convincing reasons for doing so.”
6 *Lingenfelter*, 504 F.3d at 1036 (citation and quotation marks omitted). “In making
7 a credibility determination, the ALJ ‘must specifically identify what testimony is
8 credible and what testimony undermines the claimant’s complaints[.]’” *Greger v.*
9 *Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006) (citation omitted).

10 In weighing credibility, the ALJ may consider factors including: the nature,
11 location, onset, duration, frequency, radiation, and intensity of any pain;
12 precipitating and aggravating factors (e.g., movement, activity, environmental
13 conditions); type, dosage, effectiveness, and adverse side effects of any pain
14 medication; treatment, other than medication, for relief of pain; functional
15 restrictions; the claimant’s daily activities; and “ordinary techniques of credibility
16 evaluation.” *Bunnell*, 947 F.2d at 346 (citing SSR 88-13) (quotation marks
17 omitted). The ALJ may consider: (a) inconsistencies or discrepancies in a
18 claimant’s statements; (b) inconsistencies between a claimant’s statements and
19 activities; (c) exaggerated complaints; and (d) an unexplained failure to seek
20 treatment. *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002).

21 De La Fuente testified that she could not work due to a seizure disorder
22 and lupus. AR 16, 51. She had two seizures per week in the four months leading
23 up to the hearing, mostly while she was sleeping. AR 16, 54. The lupus causes
24 her “horrible” pain, body aches, swollen joints, swollen knees and hands, and
25 drowsiness. AR 16, 55. Her medications make her confused, forgetful, and
26 drowsy. AR 16, 42, 52, 56. She also gets blurry vision. AR 53.

27 The ALJ found that De La Fuente’s medically determinable impairments
28 could reasonably be expected to cause the alleged symptoms, but her

1 statements concerning the intensity, persistence and limiting effects of her
2 symptoms were not credible to the extent they were inconsistent with the RFC.
3 AR 16. The ALJ relied on three reasons: (1) De La Fuente made inconsistent
4 statements and allegations; (2) the objective evidence did not support De La
5 Fuente's allegations; and (3) De La Fuente's activities of daily living were not
6 consistent with the alleged degree of pain and impairment. AR 16-18.

7 1. Inconsistent Statements

8 An ALJ may consider inconsistencies in a claimant's statements when
9 weighing a claimant's credibility. *Thomas*, 278 F.3d at 958-59. The ALJ cited
10 examples of De La Fuente's inconsistent statements. AR 16. Although De La
11 Fuente testified that she stopped working in 2007, she told one consultative
12 examiner that she stopped working in July 2008, and she told another
13 consultative examiner that she stopped working in September 2008. AR 16, 40,
14 268, 286. Although she alleged confusion, excessive fatigue and decreased
15 concentration, she indicated she could pay attention up to an hour and could
16 follow written instructions. AR 17, 52, 56, 212. The ALJ also noted that although
17 De La Fuente alleged that her hands get swollen and numb, she was able to
18 complete the Function Report legibly. AR 17, 52, 207-14. When stressed, she
19 goes to her room to read or pray, which requires some degree of concentration.
20 AR 17, 213.

21 2. Objective Evidence

22 Although lack of objective medical evidence supporting the degree of
23 limitation "cannot form the sole basis for discounting pain testimony," it is a factor
24 that an ALJ may consider in assessing credibility. *Burch v. Barnhart*, 400 F.3d
25 676, 681 (9th Cir. 2005). The ALJ noted that De La Fuente's neurology and
26 physical examinations were generally normal. AR 19, 271, 288, 315. Although
27 De La Fuente had symptoms of a mild to moderate synovitis in her hands, wrists,
28 left elbow, right knee, and left ankle with a painful range of motion in those joints,

1 no medical source opined that she could perform less than light work with
2 restrictions. AR 271-72, 289-90, 292-96.

3 The medical records do not support De La Fuente's allegation that she
4 could not work due to frequent seizures. On May 19, 2011, De La Fuente
5 indicated that her last seizure was in April 2011, and prior to that was a year
6 earlier. AR 17, 279. When De La Fuente went to the hospital on October 13,
7 2011 for a seizure and lupus flare, she noted she had a seizure the previous day
8 and a couple of months prior. AR 17, 332. No further seizures were reported
9 until September 2012. AR 17, 496.

10 The record does not contain an abnormal EEG or abnormal MRI/MRA. AR
11 17. In October 2011, an MRI of the brain and MRA of the head were entirely
12 normal. AR 14, 17, 343-44. There is no EEG in the record confirming a seizure
13 disorder. 18, 262.

14 Regarding evidence of De La Fuente's lupus, the ALJ noted that the record
15 indicates skin rashes and chronic polyjoint pain that do not support the alleged
16 level of pain and restricted mobility. AR 18, 279, 303, 333-34. He noted that a
17 physical examination in May 2011 indicated a rash on the face and
18 telangiectasias inside the mouth and nose, synovitis in the fingers, wrists, and
19 elbows, and trigger point tenderness throughout the body. AR 18, 279. De La
20 Fuente was treated with refills of medication and medication adjustments. AR 18,
21 280. The treatment note indicated that De La Fuente had been last seen in the
22 clinic in August 2010 and "did not have major organ manifestations." AR 18, 279.
23 An October 2011 treatment note indicated complaints such as photophobia, skin
24 rashes after exposure to sunlight, hair loss, and polyjoint swelling, but the doctor
25 found no evidence of active lupus cerebritis. AR 14, 316, 335. In March 2012,
26 De La Fuente went to the clinic complaining of arthralgias and soft tissue
27 swelling. AR 18, 351. There was no obvious edema, but there was polyjoint
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1 tenderness with mild synovitis. AR 18, 351. She was treated with medication
2 and encouraged to exercise. AR 18, 352.

3 As the ALJ noted, De La Fuente's seizures and lupus were well controlled
4 when she was compliant with treatment. AR 14, 17, 305, 324, 335, 380, 433,
5 511.

6 3. Activities of Daily Living

7 An ALJ may consider a claimant's daily activities when weighing credibility.
8 *Bunnell*, 947 F.2d at 346. The ALJ noted that De La Fuente helps with household
9 chores, depending on how she feels. AR 16, 50. She tries to vacuum every day,
10 she does laundry every two weeks, she cooks "home made healthy food" every
11 two days, she does dishes once a week, and she goes grocery shopping twice a
12 month. AR 17, 49-51, 209. She is independent in self-care and grooming, but
13 there are days she needs assistance. AR 16, 208. She cares for her daughter,
14 with assistance from her sister. AR 17, 208. She can walk half a block before
15 needing to rest for 30 to 45 minutes.³ AR 212.

16 De La Fuente argues that her daily activities do not necessarily show that
17 she can hold down a full-time job. Assuming the ALJ erred in discounting De La
18 Fuente's credibility based on her activities of daily living, remand is not
19 necessarily warranted. In *Carmickle v. Comm'r of the Soc. Sec. Admin.*, 533
20 F.3d 1155 (9th Cir. 2008), the Ninth Circuit concluded that two of the ALJ's
21 reasons for making an adverse credibility finding were invalid. However, when an
22 ALJ provides specific reasons for discounting the claimant's credibility, the
23 question is whether the ALJ's decision remains legally valid, despite such error,
24 based on the ALJ's "remaining reasoning *and ultimate credibility determination.*"

25
26 ³ The ALJ stated that De La Fuente could walk for 30-45 minutes, but it
27 appears that De La Fuente indicated that she had to rest for 30-45 minutes
28 before she resumed walking. AR 17, 212. The ALJ also stated that De La
Fuente could exercise and do other physical activities. It appears De La Fuente
wrote that she cannot do those things "extremely." AR 14, 208.

1 *Id.* at 1162 (italics in original). Therefore, when, as here, an ALJ articulates
 2 specific reasons for discounting a claimant's credibility, reliance on an illegitimate
 3 reason(s) among others does not automatically result in a remand. See *Batson v.*
 4 *Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004). In light of the
 5 ALJ's valid reasons for discounting De La Fuente's credibility and the record as a
 6 whole, substantial evidence supported the ALJ's credibility finding. See *Bray v.*
 7 *Comm'r*, 554 F.3d 1219, 1227 (9th Cir. 2009) (error was harmless even if record
 8 did not support one of four reasons for discounting claimant's testimony).
 9 Therefore, "we may not engage in second-guessing." *Thomas*, 278 F.3d at 959
 10 (citing *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir.
 11 1999)).⁴

12 IV.

13 ORDER

14 IT IS HEREBY ORDERED that the decision of the Commissioner is
 15 affirmed.

16 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and
 17 the Judgment herein on all parties or their counsel.

18
 19 DATED: November 21, 2014

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 21 _____
 ALICIA G. ROSENBERG
 United States Magistrate Judge

22 ⁴ To the extent De La Fuente contends that the ALJ did not consider the
 23 effects of her combined impairments, her claim fails. The ALJ found that De La
 24 Fuente did not have an impairment or combination of impairments that met or
 25 equaled a listed impairment, including listings 1.02, 1.04, 11.02, 11.03, and
 26 14.02. AR 15. De La Fuente offers no theory as to how her impairments
 27 combined to equal a listed impairment. *Lewis v. Apfel*, 236 F.3d 503, 514 (9th
 28 Cir. 2001) (claimant did not satisfy burden to prove that he equaled a listing when
 he "offered no theory, plausible or otherwise, as to how his [impairments]
 combined to equal a listed impairment . . . [n]or has he pointed to evidence that
 shows that his combined impairments equal a listed impairment."). Nor did she
 make such an argument to the ALJ. See *Burch*, 400 F.3d at 683 ("An ALJ is not
 required to discuss the combined effects of a claimant's impairments or compare
 them to any listing in an equivalency determination, unless the claimant presents
 evidence in an effort to establish equivalence.").